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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/924,974	08/08/2001	Russ Bevans	G008,PAT-4	3147
7590 Emery L. Tracy P.O. Box 1518 Boulder, CO 80306-1518			EXAMINER TORRES VELAZQUEZ, NORCA LIZ	
			ART UNIT 1771	PAPER NUMBER

DATE MAILED: 10/20/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/924,974

Applicant(s)

BEVANS, RUSS

Examiner

Norca L. Torres-Velazquez

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 July 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 and 13-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7 and 13-18 is/are rejected.
- 7) ☒ Claim(s) 19 and 20 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

1. Applicant's arguments filed on July 18, 2003 have been fully considered but they are not persuasive.

a. Applicant has amended claims 1 and 13 to claim that each individual fiber is intertwined with adjacent fibers and argues that the Yeh patent neither teaches nor suggests intertwined fibers or individual fibers contactable with the use as now claimed in the present application.

It is noted that there is no support in the Specification for the new limitations in the claims.

Further, if the fibers are intertwined by knitting, then this would be inherent of the Yeh's fabric since it is also made by knitting.

b. With regards to the rejection of claim 6 over the Yeh patent, the Applicant argues that the Yeh patent specifically states that fibers contacting the user have less capillarity than the fibers on the outside and that the Yeh patent teaches away from the claims of the present application.

Applicant's arguments are noted, however, claim 6 is only claiming that the fabric is reversible and not that the fabric would direct moisture from the second side to the first when it is reversed. Therefore, if the structure claimed in claim 1 of the present invention is used in the reversed side it will produce the same effect as the Yeh patent when reversed. Therefore, the Examiner does not agree with Applicant's arguments indicating that the Yeh reference will teach away from claims 1 and 6.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 1-7 and 13-20 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The Specification teaches the use of knitting to construct the fabric, but does not specifically disclose that each individual fiber is intertwined with adjacent fibers.

Therefore, the included limitations are considered new matter.

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 1-7 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is not clear in claim 1 what is meant by "...having one exposed hollow and each individual fiber..."? It seems like after "hollow" a noun such as "fiber" or "end" is missing.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

7. Claims 1-4, 7, 13-16 and 18 are rejected under 35 U.S.C. 102(e) as being anticipated by YEH (US 6,509,285 B1).

YEH discloses a fabric for moisture management, which contains fibers and second fibers. The first fibers have either circular cross-sections or multiple indentations along the longitudinal side of the fibers. The second fibers have multiple indentations along the longitudinal side of the fibers [this equates to the open-sided fibers of the present invention]. (Abstract) The invention relates to a fabric for wicking sweat or moisture from the skin using the difference in capillarity between two fibers composing the fabric. (Column 1, lines 13-16) The reference teaches the use of polyester fibers to make the fabric and also teaches using knitting to make the fabric. (Column 2, lines 28-37) The reference also teaches that the fabric structure has a first side and a second side. (Refer to Column 3, lines 20-30)

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over YEH as stated above.

The YEH reference teaches a fabric for use in garments for moisture wicking. While the YEH reference does not explicitly states that the garments using the fabric of their invention are reversible, the reference does not preclude the use of their fabric in any particular direction in a garment. Therefore, it would have been obvious to one of ordinary skill in the art of making garments to make these reversible to provide versatility to the garment.

10. Claims 5 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over YEH as applied to claims 1 and 13 above, and further in view of Bengtsson et al. (US 4,195,364).

The YEH reference teaches using knitting to make the fabric of their invention.

However, it does not explicitly teach the use of a warp knit construction.

Bengtsson et al. the use of warp knit fabric in a garment that causes regulation of climatic conditions by removing moisture and heat from the wearers skin. (Refer to Column 1, lines 10-18 and lines 65-68).

Since both YEH and Bengtsson et al. are from the same field of endeavor, the purpose disclosed by Bengtsson et al would have been recognized in the pertinent art of YEH.

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It would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the fabric construction and provide with a warp knit structure with the motivation of providing certain degree of rigidity to the structure as disclosed by Bengtsson et al. (Refer to Column 3, lines 35-39 and Column 2, lines 24-35).

Allowable Subject Matter

11. Claims 19 and 20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. The following is a statement of reasons for the indication of allowable subject matter: the prior art of record fails to teach a fabric material of the present invention with exposed hollow fibers with a substantially C-shaped cross-sectional configuration. .

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

MOMMAERTS et al. (US 3,984,515) – shows fibers with dented configurations similar to a C-shaped cross-sectional configuration, but these are not hollow or open-sided fibers. (Refer to Figures 2 (a-d).

SUZUKI et al. (US 4,361,617)

13. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO

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MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.


14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Norca L. Torres-Velazquez whose telephone number is 703-306-5714. The examiner can normally be reached on Monday-Thursday 8:00-4:00 pm..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on 703-308-2414. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

NLT

October 8, 2003


ELIZABETH M. COLE
PRIMARY EXAMINER